

In the High Court of Judicature at Madras

Dated: 02.02.2016

Coram

The Honourable Mr.JUSTICE R.SUDHAKAR

and

The Honourable Mr.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.154 of 2016

G.Krishnakumari

..... Appellant/Respondent

Vs.

A.Barani Raja

..... Respondent/Petitioner

APPEAL under Section 19 of the Family Court Act against the order dated 11.08.2015 made in O.P.No.1394 of 2010 on the file of the Principal Family Court, Chennai.

For Appellant : Mr.Asirvatham for
R.C.Manoharan

For Respondent: Mr.T.Saravanan

O R D E R

(Order of the Court was made by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal is filed by the wife challenging the order dated 11.08.2015 made in O.P.No.1394 of 2010 on the file of the Principal Family Court, Chennai ordering restitution of conjugal rights.

2. The brief facts are as follows:

The marriage between the appellant and the respondent was solemnized on 28.01.2008 and a male child was born through their wedlock. In view of some matrimonial dispute, the appellant is living with her parents. As the appellant never returned to the matrimonial home even after mediation by the elders, the respondent has filed a petition before the Principal Family Court, Chennai seeking restitution of conjugal rights. The said petition was allowed by the Family Court holding that the appellant herein is not justified in living separately without sufficient cause or lawful excuse. Aggrieved by the same, the present appeal has been filed.

3. Learned counsel appearing for the appellant submits that the trial Court has not appreciated the fact with regard to the qualification and job of the respondent, which shows his character. He further submits that the respondent has not provided any monetary assistance to take care of the child. He also submits that the respondent has not disclosed the educational qualification at the time of marriage, which amounts to cheating.

4. Per contra, learned counsel appearing for the respondent submits that the appellant had gone to her parents' home and never returned to the matrimonial home without any reason.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials placed before this Court.

6. It is seen that in the counter affidavit filed before the Family Court, the appellant, who is the respondent therein, has stated as follows:

"The respondent is always ready and willing to live with the petitioner and the respondent never refused to live with the petitioner and it is the petitioner who deliberately failed to discharge his duties as a dutiful husband. Hence the petitioner is to be dismissed."

7. When the appellant has filed a counter affidavit before the Family Court stating that she is willing to live with her husband, we failed to note why the appellant has filed the present appeal challenging the order of restitution of conjugal rights. We find that the ground taken by the appellant that the respondent has no educational qualification and that amounts to cheating does not appear to be a good ground to challenge the order of the lower Court.

8. Except picking holes in the evidence, there is no material to show that there is any other restraint in the couple living through the marital life. Admittedly, there is no petition for dissolution of marriage or any other proceedings to restrain the respondent to live with the appellant. If that be the case, we find no justification by the appellant to plead that she is aggrieved by the order of restitution of conjugal rights. If she has any grievance against the respondent, she is at liberty to proceed in accordance with law.

9. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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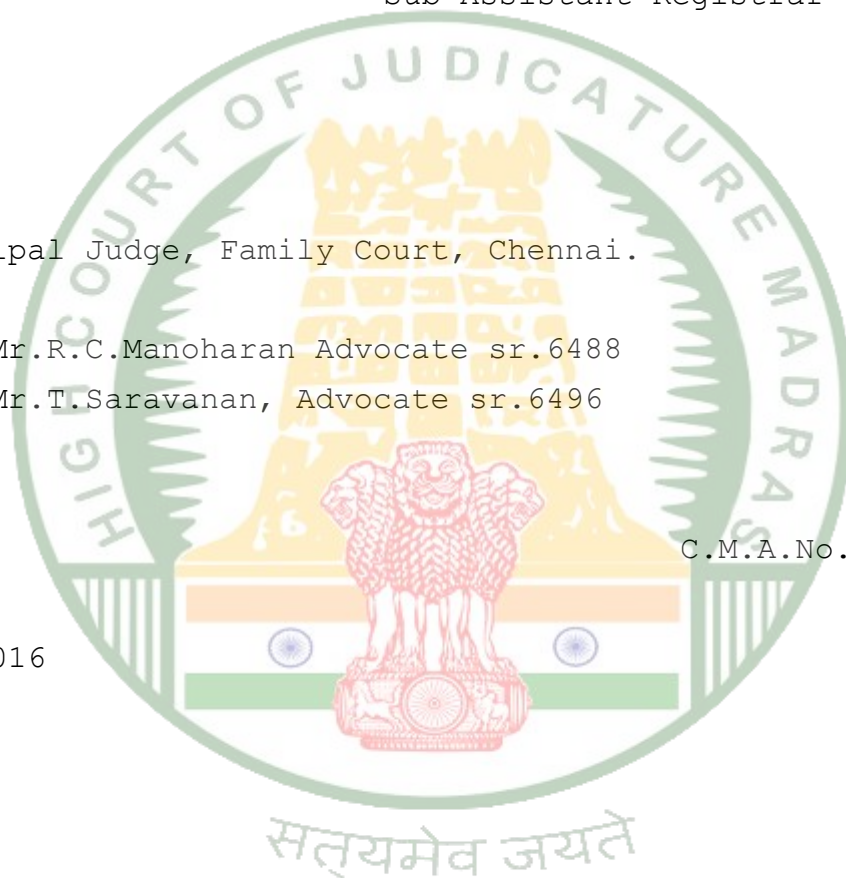
The Principal Judge, Family Court, Chennai.

+1 cc to Mr.R.C.Manoharan Advocate sr.6488

+1 cc to Mr.T.Saravanan, Advocate sr.6496

C.M.A.No.154 of 2016

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